

TAG PARTICIPATION AGREEMENT

This TAG PARTICIPATION AGREEMENT, dated January 27, 1990 (the "Agreement"), is made by and between William L. Akers, Christopher L. Ammann, Richard M. Bruya, Joseph S. Caferro, Brian K. Dennehy, Michael J. Konesky, Mark E. Mengert, Sean M. Raftis, Patrick J. Schultheis and Joseph A. Tombari (the "Participants").

WITNESSETH:

WHEREAS, Participants during those days so long past and all too brief that they spent at Gonzaga Preparatory School often did engage in a game which they knew as "Tag;"

WHEREAS, the above-named Participant Joseph A. Tombari has been "It" since June, 1982, and remains It on the date herein first mentioned above;

WHEREAS, for the sake of charity to the above-named Participant Joseph A. Tombari, and in the spirit of sportsmanship, gamesmanship and good-fellowship the participants wish to resume said game of Tag pursuant to the covenants, agreements, terms and conditions of this Agreement; and

WHEREAS, the parties do not wish the said game of Tag to degenerate into the bawdy spectacle of mayhem, disarray, terror, plague, pestilence and danger into which it had deteriorated in June 1982.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants, agreements, terms and conditions set forth herein, and intending to be legally bound hereby, the parties agree as follows:

I. Definitions.

1.1 "It" shall initially mean Joseph A. Tombari. If Joseph A. Tombari causes a valid tag (as defined below) to be made on another Participant, that Participant shall be It. Thereafter, any time that a Participant who is It causes a valid tag to be made on another Participant, that other Participant shall be It until he causes a valid tag to be made on another Participant.

1.2 "Tag" shall mean the traditional playground game of tag. Rules include, but are not limited to:

(a) A valid tag occurs whenever (subject to Article II below) It intentionally causes his hand (right or left) to come into contact with the body or clothing of any other Participant; provided, however, that it is not a valid tag when It tags the Participant who was It immediately prior to It; and

(b) When a Participant (a "Questioner") asks another Participant (a "Questionee") if he is It, the Questionee must answer promptly and truthfully. If the Questionee does not answer promptly and truthfully, and if the Questionee is It, then the Questionee cannot validly tag the Questioner until he validly tags another Participant. This rule applies whether the Questioner asks his question in person or via telephone. Questionee must reply via the same (or faster) medium as used by the Questioner.

II. Time and Geographical Restrictions.

2.1 Tag shall be played by each and every Participant beginning, initially, on February 1, 1990 and ending on February 28, 1990. Thereafter, Tag shall be played during each and every February until the termination of this Agreement. Tag shall not be played in any month other than February.

2.2 It at the end of February of each year shall continue to be It throughout the year. It shall only cease to be It when and if It makes a valid tag in February.

2.3 There are no restrictions as to geographical scope. Any tag, if otherwise valid, shall not be rendered invalid by reason of the geographical area in which it was made.

III. Remedies for Breach. Each Participant acknowledges that any breach or threatened breach by him of any provision of this Agreement will cause irreparable damage to the other Participants, the exact amount of which will be difficult or impossible to ascertain, and that remedies of law for any such breach or threatened breach will be inadequate to compensate the other Participants. Accordingly, the other Participants shall be entitled, in addition to any other rights or remedies existing in their favor, to obtain, without the necessity for any bond or other security or for proving actual damages, specific performance or injunctive relief in order to enforce, or prevent the breach of, any such provision.

IV. Payment by Participants.

4.1 After March 1, but before March 15, of each year, each and every Participant shall provide to It, in the form of

check or wire transfer (as directed by It), the amount of twenty five dollars (\$25.00) (the "Prep Payment").

4.2 Within ten (10) business days after receiving the Prep Payment from each and every Participant, It shall provide the Gonzaga Preparatory School Alumni Association with a check an amount equal to the sum of all Prep Payments added together (the "Donation"). The Donation shall be made in the name of It.

4.3 The amount of the Prep Payment shall be subject to upward adjustment upon agreement, either oral or written, by at least a majority of the Participants.

V. Assignment; Binding Effect. This Agreement is not assignable by Participant. This Agreement and the respective rights and obligations of the parties hereto shall be binding upon and inure to the benefit of the successors and assigns of the Participants.

VI. Termination; Amendment. Except as provided in Section 4.3 above, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by at least a majority of the Participants.

VII. Separate Covenants; Severability. The covenants contained in this Agreement shall be construed as a series of separate covenants. If, in any judicial proceeding, a court of competent jurisdiction shall refuse to enforce any of the separate covenants deemed included in this Agreement, then such unenforceable covenant(s) shall be deemed deleted from this Agreement to the extent necessary to permit the remaining separate covenants to be enforced. The provisions of this Agreement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

VIII. Counterparts. This Agreement may be executed by the parties on one or more counterparts, all of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IX. No Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

X. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties hereto, and supersedes all prior agreements, arrangements and understandings,

written or oral, with respect to the subject matter hereof. This Agreement may be amended only pursuant to a written amendment duly executed by all Participants.

XI. Governing Law. This Agreement will be governed by, and construed and enforced in accordance with the laws of the State of California without regard to conflicts of law.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

William L. Akers

Michael J. Konesky

Christopher L. Ammann

Mark E. Mengert



Richard M. Bruya

Sean M. Raftis

Joseph S. Caferro

Patrick J. Schultheis

Brian K. Dennehy

Joseph A. Tombari